

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY LYNN BROWN,

Defendant-Appellant.

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UNPUBLISHED

August 22, 1997

No. 191080

Calhoun Circuit Court

LC No. 95-001599-FH

Before: Sawyer, P.J., and Bandstra and E. A. Quinnell\*, JJ.

MEMORANDUM.

Defendant appeals by right his conviction of breaking and entering, enhanced as a fourth felony offender, resulting in a nine- to twenty-year sentence.

Defendant first contends that the trial court erred in taking under advisement and then failing to rule on his motion to dismiss a supplemental information, charging him as a fourth offender. The motion to dismiss was predicated on the assertion that plea bargaining had begun before the habitual offender charges were filed. This Court notes that the issue is not properly briefed and could be deemed abandoned. *Mitcham v City of Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959). In any event, it should be noted that a supplemental information was unnecessary to pursue these habitual offender charges, in light of 1994 PA 110, effective May 1, 1994, amending MCL 769.13; MSA 28.1085. *People v Zinn*, 217 Mich App 340; 551 NW2d 704 (1996). Moreover, there is nothing improper about the prosecutor plea bargaining, using the threat of habitual offender charges as leverage, and when agreement is not reached filing such charges when otherwise justified by the facts. *Bordenkircher v Hayes*, 434 US 357; 98 S Ct 663; 54 L Ed 2d 604 (1978); *People v Goeddeke*, 174 Mich App 534, 536-537; 436 NW2d 407 (1989). As the motion was substantively without merit, appellate relief because the trial court failed to deny the motion before entry of final judgment is clearly unwarranted.

Defendant's remaining argument is that his nine- to twenty-year sentence is disproportionate to the offense and the offender. His argument is predicated on the sentence guidelines, which are completely irrelevant in evaluating a habitual offender sentence. *People v Edgett*, 220 Mich App 686;

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\* Circuit judge, sitting on the Court of Appeals by assignment.

560 NW2d 360 (1996). Appellate review of a habitual offender sentence for proportionality is for abuse of the trial court's sentencing discretion. *People v Hansford* (After Remand), 454 Mich 320; 562 NW2d 460 (1997). No abuse of sentencing discretion is established on this record.

Affirmed.

/s/ David H. Sawyer

/s/ Richard A. Bandstra

/s/ Edward A. Quinnell